

ASSEMBLY BILL

No. 245

Introduced by Assembly Member Cunneen

February 1, 1999

An act to amend Sections 12022, 12022.5, and 12022.9 of, and to repeal Section 12022.55 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 245, as introduced, Cunneen. Sentencing.

(1) Under existing law, any person who is armed with a firearm, or personally uses a deadly or dangerous weapon, in the commission or attempted commission of a felony shall, upon conviction, be punished by an additional term of one year, except as specified.

This bill would increase the term of imprisonment for these sentence enhancements to one, 2, or 3 years if the person is armed with a firearm, and 3, 4, or 5 years if the person personally uses a deadly or dangerous weapon, in the commission or attempted commission of a felony.

(2) Existing law, as recently interpreted by the California Supreme Court, provides that imposition of a sentencing enhancement for personal use of a firearm is mandatory where the underlying offense is assault with a firearm. Existing law, also as interpreted by the California Supreme Court, further provides that the court has no authority to strike a sentencing enhancement for personal use of a firearm.

This bill would make conforming changes consistent with these decisions of the California Supreme Court, and would

provide that these changes are intended to be declaratory of existing law.

(3) Existing law provides that any person who, during the commission or attempted commission of a felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional term of imprisonment in the state prison for 5 years.

This bill would, for purposes of this provision, delete the requirement that the person act with the intent to inflict injury.

(4) This bill would make technical changes that consolidate other provisions of law or delete language that is duplicative of other provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12022 of the Penal Code is
2 amended to read:
3 12022. (a) (1) Except as provided in ~~subdivisions~~
4 ~~subdivision (c) and (d)~~, any person who is armed with a
5 firearm in the commission or attempted commission of a
6 felony shall, ~~upon conviction of that felony or attempted~~
7 ~~felony~~, in addition and consecutive to the punishment
8 prescribed for the ~~felony or attempted felony offense~~ of
9 which ~~he or she~~ *the person* has been convicted, be
10 punished by an additional term of *imprisonment in the*
11 *state prison for one year, two, or three years*, unless the
12 arming is an element of ~~the that offense of which he or she~~
13 ~~was convicted~~. This additional term shall apply to any
14 person who is a principal in the commission or attempted
15 commission of a felony if one or more of the principals is
16 armed with a firearm, whether or not the person is
17 personally armed with a firearm.
18 (2) Except as provided in subdivision (c), ~~and~~
19 ~~notwithstanding subdivision (d)~~, if the firearm is an

1 assault weapon, as defined in Section 12276, or a
2 machinegun, as defined in Section 12200, the additional
3 term described in this subdivision shall be three years
4 whether or not the arming is an element of the offense of
5 which ~~he or she~~ *the person* was convicted. The additional
6 term provided in this paragraph shall apply to any person
7 who is a principal in the commission or attempted
8 commission of a felony if one or more of the principals is
9 armed with an assault weapon or machinegun whether or
10 not the person is personally armed with an assault weapon
11 or machinegun.

12 (b) ~~(1) Any person who personally uses a deadly or~~
13 ~~dangerous weapon in the commission or attempted~~
14 ~~commission of a felony shall, upon conviction of that~~
15 ~~felony or attempted felony,~~ in addition and consecutive
16 to the punishment prescribed for the ~~felony or attempted~~
17 ~~felony offense~~ of which ~~he or she~~ *the person* has been
18 convicted, be punished by an additional term of ~~one year~~
19 *imprisonment in the state prison for three, four, or five*
20 *years*, unless use of a deadly or dangerous weapon is an
21 element of ~~the that~~ offense of which ~~he or she~~ was
22 convicted.

23 ~~(2) If the person described in paragraph (1) has been~~
24 ~~convicted of carjacking or attempted carjacking, the~~
25 ~~additional term shall be one, two, or three years.~~

26 ~~(3) When a person is found to have personally used a~~
27 ~~deadly or dangerous weapon in the commission or~~
28 ~~attempted commission of a felony as provided in this~~
29 ~~subdivision and the weapon is owned by that person, the~~
30 ~~court shall order that the weapon be deemed a nuisance~~
31 ~~and disposed of in the manner provided in Section 12028.~~

32 (c) Notwithstanding the enhancement set forth in
33 subdivision (a), any person who is personally armed with
34 a firearm in the commission or attempted commission of
35 a violation of Section 11351, 11351.5, 11352, 11366.5,
36 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the
37 Health and Safety Code, shall, ~~upon conviction of that~~
38 ~~offense and~~ in addition and consecutive to the
39 punishment prescribed for that offense of which ~~he or she~~
40 *the person* has been convicted, be punished by an

1 additional term of imprisonment in the state prison for
2 three, four, or five years ~~in the court's discretion. The~~
3 ~~court shall order the middle term unless there are~~
4 ~~circumstances in aggravation or mitigation. The court~~
5 ~~shall state the reasons for its enhancement choice on the~~
6 ~~record at the time of the sentence.~~

7 (d) ~~Notwithstanding the enhancement set forth in~~
8 ~~subdivision (a), any person who is not personally armed~~
9 ~~with a firearm who, knowing that another principal is~~
10 ~~personally armed with a firearm, is a principal in the~~
11 ~~commission or attempted commission of an offense~~
12 ~~specified in subdivision (e), shall, upon conviction of that~~
13 ~~offense, be punished by an additional term of one, two, or~~
14 ~~three years in the court's discretion. —The For the~~
15 ~~enhancements provided in this section, the court shall~~
16 ~~order impose the middle term unless there are~~
17 ~~circumstances in aggravation or mitigation. The court~~
18 ~~shall state the reasons for its enhancement choice on the~~
19 ~~record at the time of the sentence sentencing.~~

20 (e) ~~For purposes of imposing an enhancement under~~
21 ~~Section 1170.1, the enhancements under this section shall~~
22 ~~count as one, single enhancement.~~

23 (f) ~~Notwithstanding any other provision of law, the~~
24 ~~court may strike the additional punishment for the~~
25 ~~enhancements provided in subdivision (e) or (d) in an~~
26 ~~unusual case where the interests of justice would best be~~
27 ~~served, if the court specifies on the record and enters into~~
28 ~~the minutes the circumstances indicating that the~~
29 ~~interests of justice would best be served by that~~
30 ~~disposition.~~

31 SEC. 2. Section 12022.5 of the Penal Code is amended
32 to read:

33 12022.5. (a) ~~(1)~~ Except as provided in ~~subdivisions~~
34 ~~subdivision (b) and (e), any person who personally uses~~
35 ~~a firearm in the commission or attempted commission of~~
36 ~~a felony shall, upon conviction of that felony or attempted~~
37 ~~felony, in addition and consecutive to the punishment~~
38 ~~prescribed for the felony or attempted felony offense of~~
39 ~~which he or she the person has been convicted, be~~
40 ~~punished by an additional term of imprisonment in the~~

1 state prison for 3, 4, or 10 years, unless use of a firearm is
2 an element of ~~the that~~ offense of which he or she was
3 convicted.

4 ~~(2) If the person described in paragraph (1) has been~~
5 ~~convicted of carjacking or attempted carjacking, the~~
6 ~~additional term shall be 4, 5, or 10 years. The court shall~~
7 ~~order imposition of the middle term unless there are~~
8 ~~circumstances in aggravation or mitigation. The court~~
9 ~~shall state its reasons for its enhancement choice on the~~
10 ~~record at the time of sentencing.~~

11 ~~(b) (1) Notwithstanding subdivision (a), any person~~
12 ~~who is convicted of a felony or an attempt to commit a~~
13 ~~felony, including murder or attempted murder, in which~~
14 ~~that person discharged a firearm at an occupied motor~~
15 ~~vehicle which caused great bodily injury or death to the~~
16 ~~person of another, shall, upon conviction of that felony or~~
17 ~~attempted felony, in addition and consecutive to the~~
18 ~~sentence prescribed for the felony or attempted felony,~~
19 ~~be punished by an additional term of imprisonment in the~~
20 ~~state prison for 5, 6, or 10 years.~~

21 ~~(2) Notwithstanding subdivision (a), any person who~~
22 ~~personally uses an assault weapon, as specified in Section~~
23 ~~12276, or a machinegun, as defined in Section 12200, in the~~
24 ~~commission or attempted commission of a felony, shall,~~
25 ~~upon conviction of that felony or attempted felony, in~~
26 ~~addition and consecutive to the sentence prescribed for~~
27 ~~the felony or attempted felony offense of which the~~
28 ~~person has been convicted, be punished by an additional~~
29 ~~term of imprisonment in the state prison for 5, 6, or 10~~
30 ~~years.~~

31 ~~(c) Notwithstanding the enhancement set forth in~~
32 ~~subdivision (a), any person who personally uses a firearm~~
33 ~~in the commission or attempted commission of a violation~~
34 ~~of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378,~~
35 ~~11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety~~
36 ~~Code, shall, upon conviction of that offense and in~~
37 ~~addition and consecutive to the punishment prescribed~~
38 ~~for the offense of which he or she has been convicted, be~~
39 ~~punished by an additional term of imprisonment in the~~
40 ~~state prison for 3, 4, or 10 years in the court's discretion.~~

1 ~~The~~ *For the enhancements provided in this section, the*
2 ~~court shall order the imposition of~~ *impose* the middle
3 term unless there are circumstances in aggravation or
4 mitigation. The court shall state the reasons for its
5 enhancement choice on the record *at the time of*
6 *sentencing*.

7 (d) The additional term provided by this section ~~may~~
8 *shall* be imposed in cases of assault with a firearm under
9 ~~paragraph (2) of subdivision (a) of Section 245, or assault~~
10 ~~with a deadly weapon which is with~~ a firearm under
11 Section 245, or murder if the killing was perpetrated by
12 means of shooting a firearm from a motor vehicle,
13 intentionally at another person outside of the vehicle with
14 the intent to inflict great bodily injury or death.

15 (e) When a person is found to have personally used a
16 firearm, an assault weapon, or a machinegun in the
17 commission or attempted commission of a felony as
18 provided in this section and the firearm, assault weapon,
19 or machinegun is owned by that person, the court shall
20 order that the firearm be deemed a nuisance and
21 disposed of in the manner provided in Section 12028.

22 (f) ~~For purposes of imposing an enhancement under~~
23 ~~Section 1170.1, the enhancements under this section shall~~
24 ~~count as one, single enhancement~~ *Notwithstanding*
25 *Section 1385 or any other provision of law, the court shall*
26 *not strike any allegation, admission, or finding under this*
27 *section.*

28 SEC. 3. Section 12022.55 of the Penal Code is
29 repealed.

30 ~~12022.55. Notwithstanding Section 12022.5, any~~
31 ~~person who, with the intent to inflict great bodily injury~~
32 ~~or death, inflicts great bodily injury, as defined in Section~~
33 ~~12022.7, or causes the death of a person, other than an~~
34 ~~occupant of a motor vehicle, as a result of discharging a~~
35 ~~firearm from a motor vehicle in the commission of a~~
36 ~~felony or attempted felony, shall, upon conviction of the~~
37 ~~felony or attempted felony, in addition and consecutive~~
38 ~~to the punishment prescribed for the felony or attempted~~
39 ~~felony of which he or she has been convicted, be punished~~

1 ~~by an additional term of imprisonment in the state prison~~
2 ~~for 5, 6, or 10 years.~~

3 SEC. 4. Section 12022.9 of the Penal Code is amended
4 to read:

5 12022.9. ~~(a)~~ Any person who, during the commission
6 or attempted commission of a felony, knows or reasonably
7 should know that the victim is pregnant, and who, ~~with~~
8 ~~intent to inflict injury, and~~ without the consent of the
9 woman, personally inflicts injury upon a pregnant woman
10 that results in the termination of the pregnancy shall, in
11 addition and consecutive to the punishment prescribed
12 ~~by the felony or attempted felony for the offense~~ of which
13 the person has been convicted, be punished by an
14 additional term of *imprisonment in the state prison for*
15 ~~five years in the state prison. The additional term~~
16 ~~provided in this subdivision shall not be imposed unless~~
17 ~~the fact of that injury is charged in the accusatory~~
18 ~~pleading and admitted or found to be true by the trier of~~
19 ~~fact.~~

20 Nothing in this ~~subdivision~~ *section* shall be construed as
21 affecting the applicability of subdivision (a) of Section
22 187 of the Penal Code.

23 ~~(b) (1) Any person convicted of a violation of~~
24 ~~subdivision (c) of Section 12034 shall, in addition and~~
25 ~~consecutive to the punishment for that violation, be~~
26 ~~punished by an additional term of four years, if as a result~~
27 ~~of the defendant personally and willfully and maliciously~~
28 ~~discharging the firearm, the victim suffers paralysis or~~
29 ~~paraparesis of a major body part, including, but not~~
30 ~~limited to, the entire hand or foot.~~

31 ~~(2) Any person convicted of a violation of Section 246~~
32 ~~shall, in addition and consecutive to the punishment for~~
33 ~~that violation, be punished by an additional term of four~~
34 ~~years, if as a result of the defendant personally and~~
35 ~~willfully and maliciously discharging the firearm at an~~
36 ~~occupied motor vehicle from another motor vehicle, the~~
37 ~~victim suffers paralysis or paraparesis of a major body~~
38 ~~part, including, but not limited to, the entire hand or foot.~~

39 ~~(3) For purposes of this subdivision:~~

1 ~~(A) “Paralysis” means a major or complete loss of~~
2 ~~motor function resulting from injury to the nervous~~
3 ~~system or to a muscular mechanism.~~

4 ~~(B) “Paraparesis” means a significant weakness of a~~
5 ~~major body part, including, but not limited to, the entire~~
6 ~~hand or foot, causing the extremity to be functionally~~
7 ~~impaired and rendered useless to assist with one of the~~
8 ~~basic skills in life such as eating or walking.~~

9 ~~(C) The additional term provided in this section shall~~
10 ~~not be imposed unless the fact of the injury is charged in~~
11 ~~an accusatory pleading and admitted or found to be true~~
12 ~~by the trier of fact.~~

13 SEC. 5. (a) In repealing the enhancement in
14 paragraph (2) of subdivision (b) of Section 12022 of the
15 Penal Code, in Section 1 of this act, the Legislature
16 recognizes that the conduct punished under that
17 provision will be subject to punishment under the
18 amended general provision of subdivision (b) of Section
19 12022 of the Penal Code.

20 (b) In repealing the enhancement in subdivision (d)
21 of Section 12022 of the Penal Code, in Section 1 of this act,
22 the Legislature recognizes that the conduct punished
23 under that provision will be subject to punishment under
24 the amended general provision of subdivision (a) of
25 Section 12022 of the Penal Code.

26 (c) The repeal of those provisions of Section 12022 of
27 the Penal Code described in subdivisions (a) and (b) shall
28 not be given any retroactive application, and shall not be
29 construed to benefit any person who committed a crime
30 or received an enhancement or any other punishment
31 while those provisions were in effect.

32 SEC. 6. In repealing the specific provisions of
33 subdivision (e) of Section 12022 of the Penal Code, in
34 Section 1 of this act, and subdivision (f) of Section 12022.5
35 of the Penal Code, in Section 2 of this act, it is not the
36 intent of the Legislature to alter the application of the
37 general provision of subdivision (f) of Section 1170.1 of
38 the Penal Code to the enhancements provided in those
39 sections.

1 SEC. 7. In repealing subdivision (f) of Section 12022
2 of the Penal Code, in Section 1 of this act, it is not the
3 intent of the Legislature to alter the existing authority
4 and discretion of the court to strike the enhancements or
5 to strike the additional punishment for the enhancements
6 provided in that section pursuant to Section 1385 of the
7 Penal Code.

8 SEC. 8. (a) In repealing the enhancement in
9 paragraph (2) of subdivision (a) of Section 12022.5 of the
10 Penal Code, in Section 2 of this act, the Legislature
11 recognizes that the conduct punished under that
12 provision is now subject to greater punishment under
13 subdivision (b) of Section 12022.53 of the Penal Code.

14 (b) In repealing the enhancement in paragraph (1) of
15 subdivision (b) of Section 12022.5 of the Penal Code, in
16 Section 2 of this act, the Legislature recognizes that the
17 conduct punished under that provision is now subject to
18 greater punishment under subdivision (d) of Section
19 12022.53 of the Penal Code.

20 (c) In repealing the enhancement in subdivision (c) of
21 Section 12022.5 of the Penal Code, in Section 2 of this act,
22 the Legislature recognizes that the conduct punished
23 under that provision is now subject to the same
24 punishment under subdivision (a) of Section 12022.5 of
25 the Penal Code.

26 (d) The repeal of those provisions of Section 12022.5 of
27 the Penal Code described in subdivisions (a), (b), and (c)
28 shall not be given any retroactive application, and shall
29 not be construed to benefit any person who committed
30 a crime or received an enhancement or any other
31 punishment while those provisions were in effect.

32 SEC. 9. The amendments to subdivision (d) of
33 Section 12022.5 of the Penal Code, in Section 2 of this act,
34 are intended to be declaratory of existing law, and to
35 conform the language of the statute to the decision of the
36 California Supreme Court in *People v. Ledesma* (1997)
37 16 Cal.4th 90.

38 SEC. 10. The amendments to subdivision (f) of
39 Section 12022.5 of the Penal Code, in Section 2 of this act,
40 to prohibit striking the enhancement, are intended to be

1 declaratory of existing law as contained in *People v.*
2 *Thomas* (1992) 4 Cal.4th 206, and *People v. Ledesma*
3 (1997) 16 Cal.4th 90.

4 SEC. 11. In repealing Section 12022.55 of the Penal
5 Code, in Section 3 of this act, the Legislature recognizes
6 that the conduct punished under that provision is now
7 subject to greater punishment under subdivision (d) of
8 Section 12022.53 of the Penal Code. The repeal of Section
9 12022.55 of the Penal Code shall not be given any
10 retroactive application, and shall not be construed to
11 benefit any person who committed a crime or received
12 an enhancement or any other punishment while that
13 provision was in effect.

14 SEC. 12. In repealing the specific provision relating to
15 pleading the enhancement in subdivision (a) of Section
16 12022.9 of the Penal Code, in Section 4 of this act, it is not
17 the intent of the Legislature to alter the application of the
18 general provision of subdivision (e) of Section 1170.1 of
19 the Penal Code to the enhancement provided in that
20 section.

21 SEC. 13. In repealing the enhancements in
22 paragraphs (1) and (2) of subdivision (b) of Section
23 12022.9 of the Penal Code, in Section 4 of this act, the
24 Legislature recognizes that the conduct punished under
25 those provisions is now subject to greater punishment
26 under subdivision (d) of Section 12022.53 of the Penal
27 Code. The repeal of those provisions of Section 12022.9 of
28 the Penal Code shall not be given any retroactive
29 application, and shall not be construed to benefit any
30 person who committed a crime or received an
31 enhancement or any other punishment while those
32 provisions were in effect.

